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Seventh session

SUMMARY RECORD OF THE 19th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 8 December 1992, at 10 a.m.

Chairman: Mr. ALSTON

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The meeting was called to order at 10.30 a.m.

RELATIONS WITH UNITED NATIONS ORGANS AND OTHER TREATY BODIES (agenda item 8)

1. The CHAIRMAN welcomed Mr. Sachar, a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, who had prepared a comprehensive and useful working paper on the right to adequate housing (E/CN.4/Sub.2/1992/15).

2. Mr. SACHAR said that he had been greatly encouraged in his work by the General Comment No. 4 which the Committee had adopted in 1991. He had referred to that Comment in paragraph 7 of his paper and had noted that the Committee was of the view that the right to housing should not be interpreted in a narrow or restrictive sense. More important still, the Committee had gone on to stress that the right to adequate housing could be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. That point needed stressing because a debate seemed to be under way about which of the two Covenants was more important. He had always maintained that it was a futile controversy to try to choose between bread and freedom, which were two sides of the same coin. There was a danger that society would be torn apart if adequate housing was not provided for the millions of people who were homeless, and he was glad that the Committee was addressing the topic in greater depth and detail and with greater emphasis. He hoped it would become a key issue in the future, since he was worried about the tendency to make economic, social and cultural rights a matter of good intentions without giving Governments a mandate or instructions.

3. In India, the right to adequate housing had been developed in the famous Bombay City case, where hundreds of thousands of pavement dwellers had been removed to a place 20 or 30 km distant and provided with land. However, the permanent dwellers had gone to court, and the court had interpreted the right to life which was guaranteed under the Indian Constitution as the right to live with dignity, which was impossible without a house and a livelihood. The court had found that merely providing housing without regard to livelihood by taking the pavement dwellers away from their normal place of work was a denial of their rights. It was not enough to provide shelter; that shelter had to be connected with the right to earn a living and with other rights.

4. He expressed his appreciation of the Committee's work and hoped to have its guidance in the future.

5. The CHAIRMAN said that he looked forward to continuing contacts with Mr. Sachar and hoped the Committee would be able to exchange ideas with him. In particular he thanked Mr. Sachar for his reference to the Bombay City case in the light of continued scepticism about the possibilities of making economic, social and cultural rights justiciable. The experience in India had shown that where there was a will there was a way: what was generally missing was the will. In his view those who raised the issue of justiciability were more concerned to prevent economic rights from assuming the status they deserved than to make complex legal points.

FORMULATION OF SUGGESTIONS AND RECOMMENDATIONS OF A GENERAL NATURE BASED ON THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES TO THE COVENANT AND BY THE SPECIALIZED AGENCIES (agenda item 9) (E/C.12/1992/WP.15).

6. The CHAIRMAN noted that earlier in the session there had been a lack of clarity regarding follow-up actions and that as a result some of the exchanges with States parties had not been very rewarding. Mr. Simma had kindly prepared a note on the subject (E/C.12/1992/WP.15). Since the note was available only in English, he invited Mr. Simma to read it out so that it could be interpreted into the other working languages and then to introduce it.

7. Mr. SIMMA, after reading out his note explained that, of the four paragraphs, paragraphs 1 and 2 were introductory and paragraph 3 listed the options open to the Committee. Paragraph 4 was concerned with situations in which the Committee considered that it was unable to obtain information through the channels indicated in paragraph 3 and represented an attempt to codify the action already taken by the Committee in the case of the Dominican Republic and Panama. The note might appear to be too broad, but in view of the procedural problems with which the Committee had been confronted the situation needed clarification.

8. Mr. WIMER ZAMBRANO said that the procedure involved was of a delicate nature. He wondered what name should be given to the persons acting on behalf of the Committee.

9. The CHAIRMAN noted that the term used in Mr. Simma's note was "Committee representative(s)". To use "country rapporteur" would lead to confusion.

10. Mr. SIMMA said that "Committee representative(s)" was the designation which he had in mind. It was neutral enough to allow for various functions and was different from the nomenclature employed by the Commission on Human Rights. He therefore suggested that it should be used as the official term.

11. It was so agreed.

12. Mr. WIMER ZAMBRANO pointed out that the mission itself also needed to be given a name.

13. The CHAIRMAN observed that in paragraph 4 the term "on-site visit" was used. That seemed to be a good description.

14. Mr. SIMMA remarked that "on-site" sounded too much like a disarmament operation. The term "visit by representatives of the Committee" was unlikely to upset States parties' sensitivities.

15. Mr. MRATCHKOV said that the most important paragraph in the well-prepared note was paragraph 4. The two cases which the Committee had come across so far - the Dominican Republic and Panama - had been rather different. The mission sent pursuant to the decision taken at the Committee's sixth session and endorsed by the Economic and Social Council had been an advisory mission, whereas the text of paragraph 4 was more concerned with establishing direct contact for the purpose of obtaining further information on the situation

within the country concerned. Advising a Government through the provision of technical assistance by the Committee and the collection of information were not the same thing.

16. The CHAIRMAN suggested that an additional paragraph was needed. Paragraph 4 was essentially concerned with ascertaining the facts. The Committee representatives could first, on the basis of their observations, make recommendations to the Committee, which could then, if appropriate, offer advice to the Government in question. The decision taken by the Economic and Social Council in 1991 had omitted the first phase, which was rightly included in Mr. Simma's note.

17. Mr. SIMMA agreed that paragraph 4 of the note dealt with the situation in which the Committee had been unable to obtain the necessary information to conclude its dialogue with the State party, although there was a reference to the advisory services programme in the last sentence. In the light of Mr. Mratchkov's comment it might be advisable to add a paragraph 5 or a subparagraph (b), making paragraph 4 subparagraph (a). The new paragraph or subparagraph could codify procedures followed the previous year with regard to the Dominican Republic, where the situation had been different, since the Government had not refuted the factual information before the Committee, whereas Panama had expressly done so.

18. Mr. WIMER ZAMBRANO also agreed with Mr. Mratchkov but was not in favour of having two paragraphs instead of one. Many different situations might arise; the case of Panama involved not only a different interpretation of the facts but two different versions of them: the assertion that the information the Committee possessed did not coincide with the facts of the situation as described by the representative of Panama. Instead of being divided, elements should be added to the paragraph in order to provide for flexibility in carrying out the visit; it was not just a question of making contact with the Government but of gleaning in situ information that had been denied to the Committee.

19. Mr. TEXIER supported Mr. Wimer Zambrano's proposal: the mandate given to visiting experts should be relatively general. The mission in situ could never be rigidly fixed; basically it should cover the whole set of objectives: to propose advisory services, which made it important to have present an official from the advisory services of the Centre for Human Rights, but also to draw up a report for the Committee giving a more overall vision of the actual situation in the country. Contacts with the State were important but it was also important to have contacts with society at large. It was important to have several sources of information; in the case of the Dominican Republic and also of Panama, much information had come from non-governmental sources. Since such missions would be few in number their mandate should be as broad as possible.

20. Mr. SIMMA, agreeing with previous speakers, said that he was prepared to redraft the paragraph and would take account of their observations.

21. Mr. MUTERAHEJURU asked for clarifications about the conditions that had to be fulfilled before the Committee deemed it necessary to send representatives to visit a country. Mr. Simma might indeed have credible

sources of information, but was it the case that each time a State party denied the validity of information furnished by members of the Committee which called that State party into question, the Committee would be justified in making an on-site visit?

22. The CHAIRMAN pointed out that the procedure in question was not one that the Committee could impose on a State party. It consisted of a request to the State party to invite a representative of the Committee, and it remained entirely at the discretion of the Government whether or not to accept such a mission. The Committee had to be satisfied that there was cause for grave concern and would need to have exhausted other means of obtaining the relevant information. Those conditions had been fulfilled in the case of Panama. As Mr. Texier had said, the procedure was not one which the Committee would wish to use very often, but in his view it was an option that should be kept open.

23. Mrs. JIMENEZ BUTRAGUEÑO, congratulating Mr. Simma on the presentation of his paper, said that she did not think it advisable to stress in paragraph 4 that the Committee's visits should not be considered analogous to the appointment of a special rapporteur of the Commission on Human Rights. It would be better to refrain from making any reference to a special rapporteur.

24. Mr. MARCHAN ROMERO, agreeing with Mrs. Jimenez Butragueño, said that it would be inadvisable to make specific reference to a special rapporteur since a reader would immediately ask what was the special rapporteur's role. Analogies or dissimilarities with other human rights bodies should not be pointed out unless strictly necessary, which was not the case in paragraph 4.

25. Mr. KONATE, thanking Mr. Simma for his note, observed that it was not clear to him from paragraph 3 at what moment the Committee had to choose from among the various options that were mentioned. With regard to paragraph 4, the idea of an on-site visit should aim at two objectives, and the idea of advisory services should be given preference in order to make the mission more acceptable. If the visit, by means of its advisory services, helped a Government to overcome obstacles and proposed solutions, Governments would be much more inclined to accept the visit. On the other hand if the mission had as its sole object to make a report to the Committee, States parties might see it as a form of censure. He therefore counselled prudence and pragmatism, given that the Committee's objective was not only to collect information about the country but to proceed, together with the Government, to evaluate the situation and to make recommendations not only for the measures the Government should take but for measures involving international cooperation. To decribe the mission as one of evaluation would greatly help the Committee's action.

26. Mr. MRATCHKOV said it was apparent that there was a wide variety of sensitive circumstances that might precipitate recourse to the procedure described in paragraph 4. It might be useful for the Committee to look beyond the practices followed by the United Nations human rights monitoring bodies, such as the appointment of special rapporteurs, and look to other agencies for guidance. The International Labour Organisation, for example, had been engaged in a process of direct contacts with Governments for over 30 years, organizing country visits not so much of inspection as of technical assistance. The initial contacts were made on an unofficial basis by the

Secretariat of the Organisation, the International Labour Office, following which the visit procedure proper was formally initiated by the State concerned in the form of an official invitation from its Government to the ILO. In the case of the Committee, such preliminary background work might be accomplished through the intermediary of the Centre for Human Rights, following which the Committee might designate one or two of its members, together with a representative of the Secretariat, to visit the State concerned, principally with a view to assisting it. A decision to send a mission to a country that emanated directly from the Economic and Social Council or the Committee, would, even if it were subject to that country's acceptance, place its Government in a difficult position. Non-acceptance would imply a failure to implement the Covenant, but acceptance might be an equally sensitive issue. It would be wise to allow more time for reflection to refine the procedure to be adopted by the Committee.

27. Mr. WIMER ZAMBRANO agreed that the procedure was one that required careful handling; the lengthy discussion of the subject was proof that all were aware of its extreme sensitivity. However, in the case of Panama, its Government's reply to the Committee had been not merely unsatisfactory and inappropriate but aggressive; by denouncing the information provided by non-governmental organizations it had impugned the Committee's proceedings. In such circumstances, he failed to see how a mission to a country could be restricted to the provision of technical assistance, or how fruitful and productive discussion could be achieved against a background involving the reported destruction of a community. He joined Mr. Texier in considering that while the Committee had to be very careful with regard to the procedures employed, the mission representing the Committee could not merely be one of dialogue with and support for a Government but would have to determine the real facts behind disquieting reports received by the Committee.

28. The CHAIRMAN said it would be more appropriate for the Committee to defer the discussion of specific cases, such as that of Panama, until the general principle had been decided. While appreciating the comments calling attention to the need for the Committee to provide technical assistance and advisory services, action incumbent on it under articles 22 and 23 of the Covenant, he considered, like Mr. Wimer Zambrano and Mr. Texier, that the Committee ought in addition to have the option of a flexible and appropriate response to circumstances. The Committee would further consider the matter at a later meeting, when a revised version of Mr. Simma's note, taking the present discussion into account, would be available.

ORGANIZATION OF WORK (agenda item 2) (continued)

29. The CHAIRMAN said that in the context of the work still to be done, the Committee would have to consider the case of the New Zealand Government which had indicated its inability to present its report to the present session a mere few days before its commencement, and which having initially indicated a willingness to come before the Committee in May 1993, currently preferred the November 1993 session for the presentation of its report. He suggested that when the Committee considered the timetable for presentation of reports, the report of New Zealand should be rescheduled for consideration at the May 1993 session, on the understanding that if the New Zealand Government was again unable to attend, a formal decision should be taken at that session to

reschedule consideration of the report in November 1993. On the principle that the Committee had to take a firm stand and indicate to Governments that regular deferrals were not an easy option, the Committee would then have the opportunity to apply its decision that on the third occasion when a report was scheduled for consideration it would proceed whether or not the State party was able to be present.

30. It was so decided.

31. The CHAIRMAN said that the Committee had already decided in principle that the next day of general discussion would focus on the rights of the elderly and the ageing as they related to the Covenant. He proposed that the Committee should adopt that decision formally. Furthermore, it would appear to be time for the Committee to take the planning of its days of general discussion more seriously in future. He therefore proposed that, in view of her enthusiasm for the subject, the Committee should invite Mrs. Jiménez Butragueño to undertake the planning of the next day. It would be understood that that would involve consultation with the Secretariat and access to its advice and assistance in contacting all relevant United Nations agencies both in Geneva and elsewhere for contributions in the form of sending representatives, identifying particular topics or providing already existing or specially written documentation. Individual experts and groups might also be asked to attend or to submit short written comments in advance. Arrangements would also be made to circulate the relevant documents to members of the Committee in the relevant languages.

32. It was so decided.

The meeting rose at 12 noon.